



Mr. Philip T. Bird, Attorney
State Controller's Office
Administration Division

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Robert D. Milan
Tax Counsel

Definition of the Phrase "Occupied by the Owner"
as used in Revenue and Taxation Code Section 218(d)

You inquired as to our opinion on the applicability of the homeowners' property tax exemption if the owner rents his home while he is temporarily away. We believe that Section 218 should be interpreted to mean that the property cannot be rented on the lien date, March 1 of each year. If so rented it cannot qualify for the exemption regardless of the duration of the absence. If the property is not rented on the lien date, we have told assessors that the owner could be away temporarily for periods spanning the lien date, but that an absence of more than a year raises questions as to the principal place of residence of the owner.

The most critical question you asked was whether or not the exemption could be allowed if the owner lives at the property on the lien date, but rents his property while temporarily away during a portion of the year. In researching this question, we could find no case where we denied the exemption in such a case. It is our present position that if the owner lives at the property on the lien date and rents it during a temporary absence, he may retain the exemption because we could not show that the act of renting precludes the property from becoming his principal place of residence. As you are aware, the longer the period of renting the better argument there is that the property is not the owner's principal place of residence. We feel a period of six months rental would not disqualify the owner from the exemption, but that a year's absence would be evidence that the property is not the principal place of residence of the owner.

RDM:fp

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